

RUSSELL TEWKSBURY

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GOFORIT ENTERTAINMENT, LLC,)
Plaintiffs,)
)
v.)
)
DIGIMEDIA.COM L.P.,) Case No. 3:08-cv-02011-D
CYBERFUSION.COM L.P.,)
HAPPYDAYS, INC.,)
DIGIMEDIA.COM MANAGEMENT INC.,)
and)
SCOTT DAY,)
Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF
RUSSELL TEWKSBURY
OCTOBER 14, 2009
VOLUME I

ORAL AND VIDEOTAPED DEPOSITION OF RUSSELL TEWKSBURY,
produced as a witness at the instance of the Defendants,
and duly sworn, was taken in the above-styled and
numbered cause on the 14th day of October, 2009, from
9:06 a.m. to 2:51 p.m., before April R. Eichelberger,
CSR in and for the State of Texas, reported by machine
shorthand, at the law offices of Shore Chan Bragalone,
LLP, 901 Main Street, Suite 3300, Dallas, Texas,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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1 A P P E A R A N C E S
2

3 FOR THE PLAINTIFFS:

4 Mr. Corey D. McGaha
5 PATTON ROBERTS PLLC
6 400 Century Plaza
7 2900 St. Michael Drive
8 Texarkana, Texas 75503
9 (903) 334-7000
10 (903) 334-7007 (Fax)

11 Mr. Marshall C. Wood
12 NORTON & WOOD, L.L.P.
13 315 Main Street
14 Texarkana, Texas 75501-5604
15 (903) 823-1321
16 (903) 823-1325 (Fax)

17 FOR THE DEFENDANTS:

18 Mr. Mack J. Morgan III
19 Mr. Drew T. Palmer
20 CROWE & DUNLEVY P.C.
21 20 North Broadway, Suite 1800
22 Oklahoma City, Oklahoma 73102-8273
23 (405) 235-7700
24 (405) 239-6651 (Fax)

25 ALSO PRESENT:

Chris Birge, Videographer

RUSSELL TEWKS BURY

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1 EXHIBIT LIST

2 NO.	3 DESCRIPTION	4 PAGE
1	2005 U.S. Return of Partnership Income Form 1065; GFI 0241602425 CONFIDENTIAL	38
2	ICG Expert Report, September 1, 2009 CONFIDENTIAL	77
3	Plaintiff GoForIt's Answers and Objections to Defendant Cyberfusion.com, L.P.'s First Set of Interrogatories	105
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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This deposition is
3 being taken in Case Number 3:08-CV-02011-D filed in the
4 United States District Court for the Northern District
5 of Texas Dallas Division in the case of GoForIt
6 Entertainment, LLC, versus Digimedia.com LP,
7 Cyberfusion.com LP, HappyDays, Inc., Digimedia.com
8 Management, Inc., and Scott Day.

9 My name is Chris Birge, the videographer.
10 The court reporter is April Eichelberger of HG
11 Litigation Services, Dallas, Texas.

12 We're here today to take the deposition
13 of Russell Tewksbury, acting as designated corporate
14 representative for GoForIt Entertainment, LLC. Today's
15 date is October 14th, 2009. This deposition is being
16 taken at 901 Main Street, Dallas, Texas. We're on the
17 record at 9:06 a.m.

18 Will counsel please state their
19 appearances for the record.

20 MR. WOOD: Marshall Wood on behalf of
21 plaintiff.

22 MR. McGAHA: Corey McGaha on behalf of
23 the plaintiff.

24 MR. PALMER: Drew Palmer on behalf of the
25 defendants.

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1 MR. MORGAN: Mack Morgan on behalf of
2 defendants.

3 THE VIDEOGRAPHER: At this time, will the
4 court reporter please swear in the witness.

5 RUSSELL TEWKSBUZY,

6 having been first duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. PALMER:

9 Q. Mr. Tewksbury, thank you for being here today.
10 My first question is real standard. Can you just state
11 your name for the record.

12 A. Russell Baird Tewksbury.

13 Q. And what's your address?

14 A. 190 Escambia Lane, Number 203, Cocoa Beach,
15 Florida, is my personal address; and the corporate
16 address is in Las Vegas.

17 Q. Okay. Mr. Tewksbury, have you ever been
18 deposed before?

19 A. I believe two times.

20 Q. Okay. And in what cases were you deposed in?

21 A. Personal cases, I was in an automobile
22 accident.

23 Q. So nothing to do with this particular case?

24 A. No, sir.

25 Q. Okay. I'm sure in those cases your attorneys

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1 at least once an hour because of a medical -- he needs
2 to get up and walk around.

3 MR. PALMER: Okay.

4 MR. WOOD: Thrombosis issue.

5 MR. PALMER: Okay. No problem. And if
6 for some reason, we're approaching that hour, feel free
7 to remind me yourself.

8 Q. (BY MR. PALMER) As I ask you questions and
9 you provide answers, if I ask you a question and you
10 don't understand it, don't answer the question. Tell me
11 that you don't answer [sic] the question, and I'll try
12 to ask it in another way that you do understand.

13 If -- from time to time, your attorneys
14 are going to object to questions. That's fine. They're
15 doing their job. You still need to answer the question
16 unless your attorney advises you not to answer the
17 question. So we'll let him state his objection on the
18 record. We'll record it, and then you can answer the
19 question.

20 Also -- and this is sort of novel -- I
21 don't have a hand watch, so from time to time, I may
22 look at my phone for the time so I know we can take a
23 break whenever we need to, okay?

24 Can you describe your relationship to the
25 plaintiff GoForIt?

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1 A. I am the owner of the company and managing
2 member.

3 Q. Okay. Are you an officer of the company?

4 A. I believe so.

5 Q. Okay. How many employees does GoForIt have?

6 A. None. Excuse me. I need to clear my throat.
7 Pardon me.

8 Q. Are you not an employee of the company?

9 A. No.

10 Q. Okay. What form of organization is GoForIt?
11 Is it a corporation?

12 A. It's a limited liability corporation.

13 Q. Are you the sole member?

14 A. Yes, sir.

15 Q. And the sole shareholder? You're the entire
16 nut and bolts of the operation?

17 A. Yes, sir.

18 Q. Okay. Can you explain for me what GoForIt
19 does? How does it make money? How does it operate?
20 Where are its resources, principal place of business,
21 those types of things.

22 A. Those are five questions. GoForIt is an
23 internet website guide and directory database on the
24 internet. As far as making money, we have affiliate
25 relationships or have had affiliate relationships with

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1 attorneys and law firms.

2 Q. And MarketWorks Corporation?

3 A. Was just a marketing consulting firm.

4 Q. And I think you said earlier that
5 MarketWorks, LLC, still exists?

6 A. Yes, sir.

7 Q. Does MarketWorks -- does MarketWorks
8 Corporation still exist?

9 A. No, sir.

10 Q. So the only surviving entities now are GoForIt
11 Entertainment, LLC, and MarketWorks, LLC?

12 A. Yes.

13 Q. Okay. And do you transact any business under
14 your own name as a sole proprietorship?

15 A. Money that comes from -- that is GoForIt
16 related transfers to me personally. In other words,
17 GoForIt Entertainment doesn't have a bank account, so I
18 think, if I'm answering that correctly, then yes, that
19 would be me personally.

20 Q. So the profits that GoForIt -- or the revenue
21 that GoForIt Entertainment receives goes into your
22 personal bank account?

23 A. That is correct.

24 Q. Okay. These -- are there any other
25 entities -- well, strike that.

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1 first-level subdomain or did at one point. And I know
2 many that use GoForIt as a subsequent domain even to
3 this day. But if what you're asking me is is it a
4 second-level domain plus a top-level domain as I see
5 these here, these do not use the term "GoForIt" in that
6 combination.

7 Q. So the first-level domain and the second-level
8 domain, you're not aware of any of those that include
9 the term "GoForIt"?

10 A. A top-level domain and a second-level domain,
11 of what I've seen in Exhibit A and B, do not have the
12 words "GoForIt" in it.

13 Q. Is there -- when a domain name is registered
14 with the registrar, is there anything other than the
15 top-level domain and the second-level domain that's
16 registered?

17 A. I don't believe so.

18 Q. Okay.

19 A. That's why it goes to my comment I said
20 earlier, that it's kind of understood that it's the
21 registrant that controls all subsequent subdomains.
22 That's why I said source of origin.

23 Q. Of the terms that are listed there in
24 Exhibit A and Exhibit B, are any of those confusingly
25 similar with the GoForIt trademark?

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1 traveling to Massachusetts to do that.

2 Q. Okay. How can -- frequency, how much time do
3 you spend doing that? How many video productions will
4 you do in a year?

5 A. Not much.

6 Q. In 2008 do you know how many you did?

7 A. I don't know that we did any.

8 Q. Do you remember if you did any in 2007?

9 A. I'd have to go back and look.

10 Q. Okay. Are you aware that -- if you advertise
11 those services at all separate from goforit.com?

12 A. Have we advertised them separately from
13 goforit.com?

14 Q. Have you taken out an ad in a magazine,
15 GoForIt does audio and video production?

16 A. No.

17 Q. Okay. Have you ever done that?

18 A. Not that I'm aware of.

19 Q. Okay. Have you ever advertised GoForIt's
20 audio and video production in any form?

21 A. Aside from being listed in our trademark, you
22 mean?

23 Q. Right. Aside from being listed on your
24 trademark registration.

25 A. Verbally.

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1 Q. Okay. And how does -- how does that take
2 place?

3 A. Verbally.

4 Q. Meaning --

5 A. I don't understand your question.

6 Q. Well, when would you verbally advertise audio
7 and video distribution services in connection with the
8 GoForIt trademark?

9 A. If there was an opportunity for us to make
10 money doing it, then it would come up in conversation.
11 I guess that's the best way to explain it.

12 Q. Are people contacting you because they know
13 that GoForIt does audio and video distribution, or are
14 they contacting you because they know that Russell
15 Tewksbury does audio and video distribution?

16 MR. WOOD: Objection, form.

17 A. It depends on who's contacting me.

18 Q. (BY MR. PALMER) Do you know anyone that's
19 ever contacted you and said I'd like GoForIt to produce
20 or distribute my audio or video recording?

21 A. I don't -- well, using Butch as an example, I
22 don't know if he was calling me for me or if he was
23 calling me for GoForIt because he knows that I do that
24 with GoForIt. GoForIt was mentioned in the
25 conversation. They specifically mentioned GoForIt in

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1 IN THE UNITED STATES DISTRICT COURT
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4 GOFORIT ENTERTAINMENT, LLC,)
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8))
9 DIGIMEDIA.COM L.P.,) Case No. 3:08-cv-02011-D
10 CYBERFUSION.COM L.P.,)
11 HAPPYDAYS, INC.,)
12 DIGIMEDIA.COM MANAGEMENT INC.,)
13 and)
14 SCOTT DAY,)
15 Defendants.)

16 REPORTER'S CERTIFICATION
17 DEPOSITION OF RUSSELL TEWKSURY
18 OCTOBER 14, 2009

19 I, April Eichelberger, Certified Shorthand Reporter
20 in and for the State of Texas, hereby certify to the
21 following:

22 That the witness, RUSSELL TEWKSURY, was duly sworn
23 by the officer and that the transcript of the oral
24 deposition is a true record of the testimony given by
25 the witness;

26 That the deposition transcript was submitted on
27 10/23/09 to the witness or to the attorney
28 for the witness for examination, signature and return to
29 me by 11/22/09;

30 That the amount of time used by each party at the
31 deposition is as follows:

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1 MR. PALMER....4 hours, 11 minutes

2 MR. WOOD.....0 minutes;

3 That pursuant to information given to the deposition
4 officer at the time said testimony was taken, the
5 following includes counsel for all parties of record:

6 FOR THE PLAINTIFFS:

7 Mr. Corey D. McGaha, Mr. Marshall C. Wood

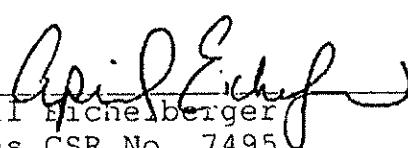
8 FOR THE DEFENDANTS:

9 Mr. Mack J. Morgan III, Mr. Drew T. Palmer

10 That \$ _____ is the deposition officer's charges
11 to the Defendants for preparing the original deposition
12 transcript and any copies of exhibits;

13 I further certify that I am neither counsel for,
14 related to, nor employed by any of the parties or
15 attorneys in the action in which this proceeding was
16 taken, and further that I am not financially or
17 otherwise interested in the outcome of the action.

18 Certified to by me this 23 day of
19 October, 2009.

21 
22 _____
23 April Michelberger
24 Texas CSR No. 7495
Expiration Date: December 31, 2009
HG Litigation, Firm No. 69
2501 Oak Lawn Avenue, Suite 600
25 Dallas, Texas 75219

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1

CHANGES AND SIGNATURE

2

WITNESS: Russell Tewksbury DATE: October 14, 2009

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1 I, RUSSELL TEWKSBURY, have read the foregoing
2 deposition and hereby affix my signature that same is
true and correct, except as noted above.

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Given under my hand and seal of office this
day of November, 2009

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NOTARY PUBLIC IN AND FOR
THE STATE OF Florida
COMMISSION EXPIRES: 12-26-09

